Marshall County / P.P.M.E. Local 2003 (Roads)

2001-02
CEO 438
SECTOR 2

IN THE MATTER OF INTEREST ARBITRATION

MARSHALL COUNTY, IOWA,	)	
EMPLOYER	)	Before
and	)	Claire A. Manning, Interest Arbitrator
PUBLIC, PROFESSIONAL AND MAINTENANCE EMPLOYEES, Local 2003,	)	June 27, 2002
UNION	)	

APPEARANCES: For the EMPLOYER, Rex Ryden; For the UNION, Michael Scarrow and Dick Williams

AWARD OF INTEREST ARBITRATOR

This matter has proceeded to interest arbitration pursuant to the impasse provisions of the Iowa Public Employment Relations Act (Act). The parties to this dispute are Marshall County, Iowa (the "Employer") and the Public, Professional and Maintenance Employees, Local 2003 (the "Union"). An interest arbitration hearing was held before the interest arbitrator at the Marshall County Courthouse, Marshalltown, Iowa on June 10, 2002. Prior to the interest arbitration, the parties to this dispute engaged in other impasse procedures provided for in the Act, including negotiations and fact-finding. A fact-finding hearing was held before Fact-Finder John R. Baker on April 24, 2002. The fact-finding recommendations were presented to the parties on April 29, 2002. As the recommendations were not accepted, and did not otherwise result in negotiations culminating in agreement, this interest arbitration pursued. The parties have mutually agreed to waive the statutory time limitation for the completion of the impasse process.

Statutory Criteria and Applicable Law

Pursuant to the Act, this interest arbitration award will finally resolve the current impasse between the parties for the period of the next contract year, which will be July 1, 2002 through June 30, 2003. In this award, in accordance with the Act, the interest arbitrator will select one of three options for each of the items in dispute. Those three options are:

the final offer of the Union; the final offer of the Employer; or the recommendation of the fact-finder. The arbitrator's selection will be based upon the statutory criteria set forth in Section 22.9 of the Act:

(a) past collective bargaining contracts between the parties including the bargaining that led up to such contracts;

(b) comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved;

(c) the interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services; and

(d) the power of the public employer to levy taxes and appropriate funds of the conduct of its operations.

Background

Marshall County, Iowa is located in central Iowa. The bargaining unit represented by the Union in this matter consists of the county's 29 Secondary Road employees. The Iowa Public Employment Relations Board certified the bargaining unit on August 15, 1979. Since that time, the Union has been recognized as the exclusive bargaining agent for this unit.

In addition to the instant impasse, the parties have engaged in statutory impasse proceedings at least two other times in their 23-year bargaining history. In 1980, the parties proceeded to interest arbitration before Interest Arbitrator James A. Sjobakeen. The arbitration award that resulted (Sjobakeen award) resolved four items of dispute between the parties: seniority; dues checkoff; hours of work and overtime; and wages. In 1999, the parties again reached impasse in their bargaining. Their 1999 dispute, this time over two items (wages and hours of work), was submitted to Fact-Finder Habbo G. Fokkena. Subsequent to the issuance of the recommendation (Fokkena Fact-Finding Report), the parties were able to reach agreement.

Items In Dispute

While the parties have been able to agree to most of the changes to the collective bargaining agreement that will be effective July 1, 2002, three basic issues remain in dispute and will be resolved, at least for the July 1, 2002 – June 30, 2003 collective bargaining agreement, through this statutory impasse process. The items are listed below, followed by the final offer of each party regarding the item, as well as the recommendation of the fact-finder on each item.

ITEM #1: Hours of Work/Compensatory Time.

The Employer's final offer on this item was to retain the current contract language. The fact-finder also recommended that the current contract language be retained. The Union seeks the following changes (denoted by the underlining and shading of proposed new language and the striking out of language sought to be deleted) to current Article 13 of the parties' collective bargaining agreement, which governs Hours of Work. Specifically, the Union seeks to delete language which currently allows the Employer great latitude in scheduling work and to add language which would allow employees more flexibility in their work schedule through the addition of compensatory time and the allowance of limited banking of that time.

The purpose of this Article is intended to define the normal hours of work~~, and shall not be construed as a guarantee of hours of work per day or days of work per week. Determination of the daily and weekly work schedule shall be made by the Employer.~~

Work Week - Said work week starts at 12:01 Saturday and runs through midnight the following Friday.

Summer Season - The normal work day shall consist of nine (9) hours of work. One-half (1/2) hour, from 12:00 Noon to 12:30 PM, shall be observed as an unpaid lunch period. The normal work week shall consist of forty-five (45) hours~~, and after earning forty five (45) compensated hours, an employee may be sent home and placed in non pay status for the balance of said work week.~~

Winter Season - The normal work day shall consist of eight (8) hours of work. One-half (1/2) hour, from 12:00 Noon to 12:30 PM, shall be observed as an unpaid lunch period. The normal work week shall consist of forty (40) hours~~, and after earning forty (40) compensated hours, an employee may be sent home and placed in non pay status for the balance of said work week.~~

During said summer season, any hours worked in excess of nine (9) hours in a day or forty-five (45) hours in a work week must be assigned and approved of by the Employer. During said winter season, any hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week must be assigned and approved of by the Employer~~, and said employee can be removed from duty any time after said forty (40) hours in a week are worked or paid for.~~

Compensatory Time

Employees may elect to receive compensatory time off in lieu of overtime pay at the rate of time and one-half for work performed during the winter season. Employees are allowed to accumulate a maximum of forty (40) hours. Scheduling compensatory

time off will be by mutual agreement between the County and the employee but shall not be unreasonably denied. Only twenty (20) of these hours may be carried over beyond April 1st of each year. If an employee is at his/her maximum allowance of compensatory time, the Employer may send the employee home after reaching his/her normal work week hours. Compensatory time shall count as time worked for computing overtime.

Season Duration - The summer season shall commence in April and run for thirty-four (34) consecutive weeks. The winter season shall be the remaining weeks in the consecutive twelve (12) month period.

Rest Periods - The Employer shall grant, with pay, one (1) rest period from 9:15 AM to 9:30 AM in the morning, and one (1) rest period from 2:30 PM to 2:45 PM in the afternoon.

Upon Employer approval, on an individual employee basis, the aforementioned prescribed times and arrangements for lunch and rest periods may be changed.

Travel time from point of origin to site of work and return shall be considered part of the working day. Point of origin for all workers shall be the respective maintenance building to which each employee may be assigned.

Overtime.

Overtime shall be paid for at the rate of time and one-half (1 ½) the employee's straight time hourly rate for hours worked in excess of eight (8) hours in any one (1) work day. Work performed on Saturday, Sunday or a recognized paid holiday will be paid for at time and one-half (1 ½) the employee's straight time hourly rate. Overtime shall not be paid more than once for the same hours worked.

Any work performed outside of the normal designated work day hours must have prior approval by supervisory personnel. Each employee performing work at times other than during the normal work day hours must notify a supervisor at the time he/she starts and at the time he/she completes the work.

ITEM #2: Insurance

The County has recently become self-insured and has several insurance plans, designated by number. The current plan that covers the bargaining unit employees requires employees to pay $100 per month for family coverage and nothing for individual coverage. It also provides for a $100 deductible for individual coverage and a $200 deductible for family coverage. The current plan also provides for maximum out-of-pocket expenditures of $500 for individual coverage and $1000 for family coverage. The drug plan provides for a $5/$10/$20 co-pay depending on the type of drugs purchased.

The Union's final offer would apply the benefits of Plan 4 for the 2002-2003 contract. (Employer Ex. 5). The deductible for Plan 4 would be $250 for individual coverage and $500 for family coverage. The maximum out-of-pocket coverage for this plan is $750 for individual coverage and $1500 for family coverage. The drug plan provides for a $5/$10/$20 co-pay depending on the type of drugs purchased. The Union proposes to raise the employee's contribution to $110 per month for family coverage.

The Employer's final offer would apply the benefits of Plan 3 (Employer Ex. 7) to the 2002-2003 collective bargaining agreement. The deductible for Plan 3 would be $500 for individual coverage and $1000 for family coverage. The maximum out-of-pocket coverage for this plan is $1250 for individual coverage and $2500 for family coverage. The drug plan provides for a $10/$20/$40 co-pay depending on the type of drugs purchased. The Employer proposes to have the employee pay $150 per month for family coverage and to retain the current contract benefit requiring no payment for individual coverage.

The fact-finder recommended the implementation of Plan 4, but with a $200 per month payment by employees for family coverage.

ITEM #3: Wages

The Union's final offer on wages is an increase of 60 cents per hour for all bargaining unit employees. The Employer's final offer on wages is an increase of 40 cents per hour. The fact-finder recommended an increase of 50 cents per hour.

Discussion and Analysis

The parties have both done an excellent job of presenting their respective positions, with supporting data, in a clear and persuasive manner. This interest arbitration award is based upon a comparison of those arguments, and that data, against the statutory criteria relevant to Iowa impasse proceedings.

Comparability. Comparability is a basic component of all interest arbitration proceedings in Iowa. In this proceeding, the Union presents a two-tiered comparability group. The first group is composed of nineteen counties, similarly situated geographically to Marshall in that they are all located in central Iowa and, to varying degrees, surround Marshall: Benton, Blackhawk, Boone, Bremer, Butler, Dallas, Franklin, Grundy, Hamilton, Hardin, Iowa, Jasper, Keokuk, Mahaska, Marion, Polk, Powesheik, Story, and Tama. All of these counties have similar degrees of industrial and agricultural industries, as well as similarities in terms of population and tax base. All are unionized with the exception of Butler, Hamilton, Marion and Powesheik. The second tier, denoted by the Union as the "truer comparability group" includes eight of the same counties as in the first tier. However, these eight counties border, or come very close to bordering, Marshall: Boone, Dallas, Jasper, Majaska, Marion, Powesheik, Story and Tama. These groups have been used as comparables in past impasse

proceedings. The Employer has not presented a better grouping. Based upon the data presented, the arbitrator accepts the groups of counties presented by the Union as comparables.

ITEM #1: Hours of Work/Compensatory Time

Comparability. If comparability were the only factor relevant in interest arbitration, the arbitrator would certainly award the Union its proposal. Certainly, it is easy to understand the ratioinale behind such proposal. The contract provisions in place regarding hours of work and overtime, which were imposed in the Sjobakeen award over twenty years ago, are not only not comparable to surrounding and similarly situated Iowa counties, they are unique. There is no provision for use of compensatory time at all. Instead, the current contract provision allows great latitude to the Employer in scheduling employees and very little flexibility to employees in scheduling time off. Specifically, the contract allows the Employer, on an "as needed" basis, to call an employee in early for his work week and, when the work week hourly quota is reached, the Employer is allowed to "send the employee home." This results in a situation where, whenever weekend work is needed, employees are called in, given overtime for weekend work, but then sent home. Thus, they are "off" on what is normally a regular work day for them, usually a Friday.

A review of the contracts presented by the Union for the comparable counties shows that the Union's proposal is very reasonable and well-considered. Indeed, most of the counties allow for compensatory time, some in lieu of overtime, at the discretion of the employee, generally with the consent of management. Most also allow the employee to accumulate compensatory time for later use. The Union's proposal, which contains a two-tiered banking of comp days approach based upon seasonal needs of the Employer, is quite reasonable considering the nature of the scheduling provisions of other counties.

Prior Bargaining History. Given that the current hours of work system was designed over twenty years ago through an interest arbitration award, past bargaining history is extremely relevant in this proceeding. Indeed, at hearing the Union asserted it's strongly held belief that the only way it will see greater flexibility in its work schedules language is through the imposition of such language by a neutral. Indeed, in the fact-finding proceeding which occurred in this contract dispute, the fact-finder appeared to express the idea that since a sort of quid pro quo had been reached in 1980, the fact-finder was hesitant to change the status quo. While I share the fact-finder's hesitancy to award the Union its proposal in this proceeding, I do not believe that the parties should consider that the bargain that was "struck" or imposed over twenty years ago should not be undone. The quandary I face is whether it should be undone in the context of this interest arbitration.

Clearly, the issue has been a sticking point in the bargaining relationship of the parties for some time. Clearly, the Union has been attempting to get the Employer to agree to more flexible work hours, and such attempts have not been successful. Clearly, the Union's position is reasonable and thoughtful. Nonetheless, interest arbitration is not the best vehicle for the imposition or introduction of a new way for the workplace to operate, certainly not without full

and free negotiations that have culminated in an utter lack of meeting of minds on the subject. While I appreciate the Union's frustration and applaud them for their thoughtful and well considered proposal, I remain hopeful that the parties can still come to some meeting of the minds over this important benefit – in a way that will work for both parties. To do so would, in the long run, benefit the parties in a much larger way than the imposition of a new work scheduling process by this interest arbitrator.

Public Interest/Cost. Stated generally, the third statutory interest arbitration factor requires the consideration of cost: from the public interest perspective, as well as the financial perspective. From the public interest perspective, the parties' continued inability to come to agreement on the reasonable question of greater flexibility for work hours for employees is not in the public interest. From the financial interest perspective, the record does not contain enough information for me to ascertain what the cost of the Union's proposal might be. At hearing, the Employer alluded to the fact that the current system is a budgetary benefit for it since it controls the amount of money spent on overtime. It remains unclear what the cost of the Union's proposal might mean to the Employer and, while costs should not be used as a reason to deny the Union the flexibility it seeks, or legitimate payment for necessary overtime, costs certainly needs to be considered.

Conclusion. For the above reasons, the arbitrator will not award the Union its position on overtime in this proceeding. Instead, the arbitrator, for different reasons perhaps, accepts the position of the Employer and the fact-finder too, at this time, retain the current contract language.

ITEM #2: Insurance

Comparability. Comparing both parties' proposals on insurance to the comparable counties, the Union's proposal better meets this criteria. The current deductible is $100 for individual coverage and $200 for family coverage ($100/$200). The Employer's proposal will raise the employees' deductible to $500/$1000 while the Union's proposal will raise it to $250/$500. The Union's data on comparable counties shows that only two counties (Grundy and Hamilton) have deductible amounts at $500/$1000. The majority have deductibles in the amount of $100/$200 and some are $250/$500. Further, the Union's proposed payment of $110 per month for insurance is much more comparable than the Employer's proposed payment of $150 per month or the fact-finder's suggested payment of $200 per month. The average payment for insurance by employees in the comparable counties is about $100 per month.

Bargaining History. On this item, bargaining history is of little relevance. The Union argues that it should not pay the price for the Employer's alleged costly decision of becoming self-insured. As this was not a change that was bargained for, the arbitrator does not consider the change of insurance plans to be relevant to the issue of what is the best plan for the 2002-2003 contract year.

Public Interest/Cost. The costs to the County of its employees' insurance has risen drastically, particularly for 2001 (45%). The projected increase for 2002 is almost 30%. Adoption of the Union's proposal would result in an aggregate cost of $290,172 for the contract year, while adoption of the Employer's proposal would result in an aggregate cost of $218,832 for the contract year. Thus, the Employer asserts that the "dollar difference between the Union's proposal and the County's proposal is $71,340, which is the equivalent of an across-the-board wage increase of $1.05 per hour." The Employer further argues that adoption of Union's position would be financially irresponsible because it would mean that the Employer would be paying the equivalent of $4.29 per hour for insurance coverage compared to $3.30 per hour two years ago and $2.28 per hour three years ago."

While the rising costs of health insurance is a factor that no bargaining partner or neutral can ignore or avoid, it cannot and should not be the sole factor in considering the appropriateness of each parties' position. The Employer's attempt to translate its higher insurance costs into a direct hourly wage increase ignores the cost to the employee which results from the Employer's larger proposed deductible and out-of-pocket expenditures. The additional medical costs which would result from the Employer's proposal would no doubt *lower* an employee's hourly wage in a way that is at least as substantial.

Ability to Pay. While the employer presented information concerning the financial condition of the Secondary Road Department, that information does not lead to the conclusion that the Employer cannot pay for the insurance program proposed by the Union.

Conclusion. For the reasons state above, the arbitrator awards the Union's position on insurance.

ITEM #3: Wages

Comparability. The Union's data shows that the average wage of its bargaining unit employees is $14.51. That wage is 54 cents lower than the average wage of the 19 comparable counties ($15.05), as well as 92 cents lower than the average of the smaller subgroup ($15.43). The Union, like the Employer, also factored in the cost of its monthly insurance share into its wage and came up with a "spendable earning" figure which, for the bargaining unit employees is $14.48. Comparing this same "spendable earning" figure to those of the nineteen other counties, Marshall is 48 cents below average. Comparing the spendable earning figure to those in the smaller subgroup of comparables, Marshall is 47 cents below average.

The Union's data also showed that the average July 1, 2002 increase for the nineteen comparable counties is 51 cents per hour or 3.4% increase. For the smaller subset of comparable counties, the average increase is 54 cents or 3.51%.

While the Employer's figures compare the employees' wages to those of six counties used by the Union, and while they compare favorably to those six, the arbitrator believes the

Union's broader grouping provides a more appropriate comparison than those limited counties compared by the Employer.

Bargaining History. This factor is of limited relevance to the present issue of wages in the proceeding currently before the arbitrator.

Public Interest/Cost. The Employer argues that, given the rising costs of insurance and the Union's insurance proposal, a 60 cent per hour increase would be entirely too costly and unwarranted.

Ability to Pay. Again, while the employer presented information concerning the financial condition of the Secondary Road Department, that information does not lead to the conclusion that the Employer cannot pay for a reasonable wage increase

Conclusion. Of the three wage proposals before the arbitrator: Union, 60 cents; Employer, 40 cents; and fact-finder, 50 cents, the arbitrator believes that the fact-finder's recommendation best meets the statutory criteria.

CONCLUSION

The interest arbitrator makes the following awards in this proceeding.

- HOURS OF WORK/COMPENSATORY TIME – Retain current language as proposed by the Employer and recommended by the fact-finder.

- INSURANCE – Proposal of the Union (Plan 4; $110 monthly employee contribution for family coverage).

- WAGES – Recommendation of the fact finder (50 cents per hour increase).

Respectfully submitted,

Claire A. Manning
Arbitrator

Springfield, Illinois
June 28, 2002

Claire A. Manning
Arbitrator
P.O. Box 454
Springfield, Illinois 62705

BILL FOR ARBITRATION SERVICES

Per Diem – 3.5 days (Hearing and Travel time, Research and Writing) @ $650 per day	$2275.00
Travel (via automobile) 600 miles @ 35 cents per mile	$ 210.00
Hotel (Americ Inn)	$ 66.99

TOTAL DUE: $2,551.99

From Employer: $1,275.99

From Union: $1,275.99

For purposes of taxes, please use the arbitrator's Social Security Number (345-38-0541)

PAYMENT DUE UPON RECEIPT

THANK YOU!!!!

CERTIFICATE OF SERVICE

I certify that on the 28th day of June 2002, I served the foregoing Award of Arbitrator upon each of the parties to this matter, by telefax as well by the U.S. Postal Service, a copy to them at their respective addresses as shown below:

Mr. Mike Scarrow
P.O. Box 113
Mason City, IA 50402-0113
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Mr. Rex J. Ryden
Cartwright, Druker & Ryden
112 West Church Street
Marshalltown, IA 50158
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I further certify that on the 1st day of July 2002, I will submit this Award for filing by mailing it by the U.S. Postal Service to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, Iowa 50309.

Claire A. Manning

Claire A. Manning, Arbitrator